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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Edward Blum, et al.,

No. CV-20-00409-PHX-DLR

10 Plaintiffs,

ORDER

11 v.

12 Banner Health, et al.,

13 Defendants.

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16 Before the Court is Plaintiffs' motion seeking appointment of counsel or, in the
17 alternative, an indefinite stay of this matter while they search for counsel. (Doc. 91.) Both
18 requests will be denied.

19 Plaintiffs are self-represented and have been since they filed this case in February
20 2020. (Doc. 1.) Plaintiffs are not proceeding in forma pauperis; at the time they filed their
21 complaint, they paid the filing fee associated with this action and they have never applied
22 to proceed without prepaying fees and costs.

23 In May 2020, Plaintiffs moved for the appointment of counsel. (Doc. 20.) The
24 Court denied the motion, explaining:

25 Generally, there is no constitutional right to appointment of
26 counsel in a civil case. *Johnson v. U.S. Dep't of Treasury*, 939
27 F.2d 820, 824 (9th Cir. 1991). The Court has discretion,
28 pursuant to 28 U.S.C. § 1915(e)(1), to appoint counsel to
represent civil litigants who cannot afford counsel. However,
appointment of counsel is appropriate only when "exceptional
circumstances" are present. *Terrell v. Brewer*, 935 F.2d 1015,
1017 (9th Cir. 1991) (citing *Wilborn v. Escalderon*, 789 F.2d

1 1328, 1331 (9th Cir. 1986)). In determining whether to appoint
 2 counsel, the Court must evaluate both the likelihood of success
 3 on the merits, and the ability of the plaintiffs to articulate their
 4 claims pro se, in view of the complexity of the case. *Wood v.
 Housewright*, 900 F.2d 1332, 1335 (9th Cir. 1990).

5 Here, Plaintiffs are not proceeding in forma pauperis pursuant
 6 to § 1915, nor have they shown that they cannot afford an
 7 attorney. Plaintiffs do not argue in their motion that they
 8 cannot afford an attorney. Instead, they argue that the Court
 9 should appoint counsel because they have been unable to find
 10 an attorney. (Doc. 20 at 1.) For the first time in their reply
 11 brief, Plaintiffs contend that they cannot afford counsel, but
 12 they do not provide any evidence to support the claim. They
 13 simply state that they “are on Social Security” and that
 14 “Plaintiff Nancy Blum works thirty-three hours a week as a
 15 caregiver for minimum wage.” (Doc. 23 at 1-2.) Plaintiffs do
 16 not provide evidence of their financial circumstances. Nor
 17 have Plaintiffs shown that exceptional circumstances warrant
 18 court-appointed counsel. Plaintiffs’ claims do not appear
 19 particularly complex, and Plaintiffs thus far have not
 20 demonstrated an inability to articulate their claims or positions.
 21 Lastly, Plaintiffs’ likelihood of success on the merits is
 22 dubious, especially considering the statute of limitations
 23 arguments Defendants have raised in their motions to dismiss
 24 (Docs. 10, 11.)

25 (Doc. 24.)

26 Plaintiffs thereafter proceeded to litigate this case pro se for two years. On
 27 December 3, 2021, Defendants moved for summary judgment. (Doc. 83.) Plaintiffs
 28 responded on December 15, 2021. (Doc. 84.) Defendants replied on December 22, 2021.
 29 (Doc. 85.) The parties participated in an unsuccessful settlement conference before a
 30 Magistrate Judge on June 14, 2022. (Doc. 90.) Then, on June 23, 2022—six months after
 31 the close of summary judgment briefing—Plaintiffs filed a motion again seeking
 32 appointment of counsel. (Doc. 91.) But Plaintiffs’ latest request suffers the same defects
 33 as their first.

34 First, Plaintiffs still are not proceeding in forma pauperis pursuant to § 1915.¹ Their
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36 ¹ Litigants who want to proceed in forma pauperis must complete a Form AO 239,
 37 which is publicly available on the District Court’s website, <https://www.azd.uscourts.gov/>,
 38 under “Forms for Self-Represented Litigants,” which can be accessed by clicking on “For
 39 those Proceeding Without an Attorney” in the upper right corner of the homepage. In their
 40 reply brief, Plaintiffs imply that they wish to proceed in forma pauperis, but they have
 41 never filed out a Form AO 239—and they know how to do so, having filed the form in a
 42 previous case (Doc. 2 in *Blum v. Keane, et al*, 2:17-cv-01345-GMS). Plaintiffs’ failure to
 43 submit a Form AO 239 makes it impossible for the Court to properly assess their ability to
 44 pay the costs and fees associated with this action. Moreover, the fact that Plaintiffs already

1 motion does not argue that they cannot afford an attorney; they argue for the first time in
 2 their reply brief that they cannot afford counsel. Plaintiffs claim that they receive \$1,183
 3 per month in Social Security benefits, and that Mrs. Blum earns \$900 every two weeks
 4 working as a caregiver, but they once again do not provide evidence of their financial
 5 circumstances. And this is surprising, considering the Court pointed out all of these
 6 problems the first time Plaintiffs moved for appointment of counsel.

7 Second, Plaintiffs' claim is not especially complex, and Plaintiffs have not
 8 demonstrated an inability to articulate their claims or positions. Indeed, they already timely
 9 responded to Defendants' summary judgment motion. The Court also notes that this is not
 10 Plaintiffs' first time litigating pro se in federal court. They have litigated at least three
 11 other cases in this District: *Blum v. Kleven, et al*, 2:12-cv-01680-ROS (filed August 8,
 12 2012), *Blum v. Duran, et al*, 2:13-cv-00966-DLR (filed May 10, 2013), and *Blum v. Keane,*
 13 *et al*, 2:17-cv-01345-GMS (filed May 3, 2017).² By now, then, Plaintiffs should be familiar
 14 with the process. Indeed, during the scheduling conference held in this matter on March
 15 30, 2021, the Court attempted to explain what Plaintiffs should expect from the summary
 16 judgment process. Plaintiffs interjected to assure the Court that they've been in federal
 17 court a few times and had no qualms about presenting their case.

18 Lastly, based on the Court's preliminary review of the summary judgment briefing,
 19 Plaintiffs do not appear likely to succeed on the merits of their claim. In sum, Plaintiffs
 20 have not demonstrated that exceptional circumstances warrant appointment of counsel.

21 The Court also denies Plaintiffs' alternative request to stay this action until such
 22 time that they may obtain counsel on their own. As noted, the parties have litigated this
 23 case for two years. Discovery is over. Summary judgment briefing is closed, and the Court
 24 has Defendants' fully briefed summary judgment motion under advisement. Plaintiffs have
 25 not shown good cause for an indefinite stay.

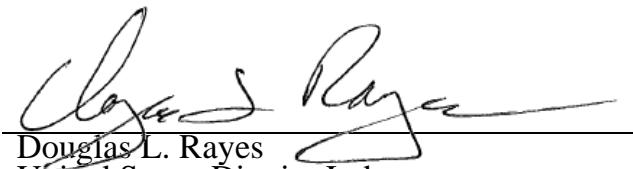
26
 27 paid the filing fee is strong evidence that they are capable of paying the fees and costs
 28 associated with this action, even if they might not have the means to hire an attorney (which
 is different than paying court fees and costs).

2 In all but one of those cases, Plaintiffs paid the filing fee associated with the action,
 and in none of those cases was counsel appointed.

1 The Court will rule on Defendants' summary judgment motion in due course. In
2 the event the summary judgment motion is denied, the Court is willing to revisit whether
3 to appoint counsel to assist Plaintiffs at trial. But at this juncture, neither a stay nor
4 appointment of counsel is warranted.

5 **IT IS ORDERED** that Plaintiff's motion to stay and for the appointment of counsel
6 (Doc. 91) is **DENIED**.

7 Dated this 24th day of August, 2022.

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12 Douglas L. Rayes
13 United States District Judge

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